Outside Legal Counsel

Correspondence from Philip L. Ellison, MBA, JD, Esq
Business Counselor & Attorney at Law
pellison@olcplc.com

October 27, 2017

Hon. Klint Kesto, Committee Chair
Hon. Peter Lucido, Majority Vice-Chair
Hon. Stephanie Chang, Minority Vice-Chair
Law and Justice Committee
Michigan House of Representatives
Lansing, Michigan

RE: Support of HB4766
Technical amendment to Michigan's *Open Meetings Act*

Dear Chairman Keskto, Vice Chairs Lucido and Chang, and Members of the Law and Justice Committee:

The average citizen does not have an army of lobbyists. Yet, the legislative decisions and policy choices of their local governments can affect where they live, whether they can open a business, decide if a new house could be built on their property, and how their hard-earned tax dollars are spent. Those decisions are made and are required to be made at meetings open to the public. As it should be. The *Open Meetings Act* ensures that—until 2014.

My name is Philip Ellison and I am an open government attorney from Saginaw County, Michigan. While my primary practice involves specialized civil litigation, my law office also regularly represents local political leaders, community advocates, and others who have been victims of intentional violations of the *Open Meetings Act*. The Supreme Court has recognized me for my unique open government practice but allowing me in *Open Meetings Act* and *Freedom of Information Act* cases to personally submit friend of the court briefs in support of legal issues on these two laws.

Generally, the *Open Meetings Act* is a great law as it requires that the public be provided public notice of hearings, the creation and retention of meetings minutes, the ability to attend and record public meetings, and imposes the strict obligation that the citizenry be provide the opportunity to have public comment.

However, what happens when rogue politicians decide <u>not to</u> adhere to the basic transparency requirements under the Open Meetings Act?

Great Lakes Bay Region
PO Box 107
Hemlock, MI 48626
Direct (989) 642-0055
Fax (888) 398-7003

www.olcplc.com

Citizens can turn to the courts, but practically speaking the average citizen just does not have the funds required to prepare and prosecute a legal case against a local government who has a vastly larger treasury to fight.

The Legislature previously anticipated that problem and required payment of "actual attorney fees" and "court costs" to a successful citizen who challenges blatant violations of the *Open Meetings Act*. MCL 15.271(4). For many years, citizens and their open-government attorneys, acting essentially as private attorney generals, have effectuated and created a robust body of law mandating that local governments operate transparently and in compliance with the basic obligations required by the Legislature, i.e. notice, public comment, meeting access, and minutes. Most public bodies obey the law; a few do not and need to made to account.

However, in 2014, a disastrous and fatal decision of the Michigan Supreme Court was issued which undermines the ability *to enforce* this open government law.

Under the *Open Meetings Act*, a person who brought suit against a public body and obtained a ruling that a public body violated the *Open Meetings Act*, the local court had to award "actual attorney fees" and costs to reimburse citizens who successfully convinced a court that a public body violated the statute. E.g. *Schmiedicke v Clare Sch Bd*, 228 Mich App 259 (1998); This was good public policy as it allowed private individuals, specifically those on the front-lines, the opportunity to halt illegal meeting practices which endanger the principles of good, open, and transparent government and our self-governing values when the Attorney General's office did not have the time or ability to police the same. In protection of local tax dollars, unsuccessfully litigants received nothing. In basic terms, successful prosecutions meant that a successful plaintiff was not left with any out of pocket costs when a public body was deemed to be acting illegally. As you can imagine, this served as a major deterrent to those public bodies that would violate the public trust, meet in secret, fail to give notices of public meetings, and other actions unambiguously prohibited by the *Open Meetings Act*.

However, in last days of 2014, the Michigan Supreme Court issued its decision in *Speicher v Columbia Twp Bd of Trustees*. By this decision, the Michigan Supreme Court ended the possibility of reimbursement of attorney fees and costs unless and until a local circuit court granted, in its sole discretion, an injunction (i.e. a court order) against a public body from future violations. Under Michigan law, unless a statute specifically states otherwise, an injunction may or may not be issued at the sole discretion of the court. Most courts, likely for political reasons, do not issue them but instead issue declaratory judgments. This usually occurred from a litigation "promise" never to violate the law again—a non-legally binding promise easily made, easily broken.

For the past thirty years, any finding of a violation of OMA was enough to require the reimbursement of the costs of the successful prosecution on the violating public body. This standard served the citizens of this state well.

Now, the Michigan Supreme Court has determined that the Legislature (i.e. you) really only meant to make this reimbursement available when and if a court felt like ordering a public body to stop violating OMA—something the Courts may but was not required to do. The decision on whether the injunction should issue is solely left at the discretion of the judge. As you might can guess, without more certainty in the ability to obtain injunctions (and by extension attorney fees and costs), attorneys like me cannot offer to represent local individuals unless they pay out of their own pocket to pursue abuses of the political process. Literally, the Supreme Court's decision gutted any real private enforcement of the *Open Meetings Act*.

Case in point, I am attaching a decision issued by the St. Clair County Circuit Court. The case was simple. The local school board decided to make an employment offer to a new superintendent and the *Open Meetings Act* requires such deliberations regarding the terms of said contract to take place at public meetings (as it should be). Instead, the school board secretly met using email to discuss and decide what kind of contract terms to offer the superintendent. This over a half million dollar contract for the highest and most important school official in a local school system was deliberated and discussed using secret private emails which the public was never privy to. My office represented a local parents group and one of its volunteer leaders in a legal action against the school board seeking to stop this 'backroom' deal-making via secret emails. The school board fought hard but fortunately the local circuit court sided with openness and transparency and declared that such secret emails violated the Open Meetings Act.

However, based on the decision in *Speicher*, the St. Clair County Circuit Court refused to order the school board to stop utilizing this illegal process. Instead, it shockingly concluded that, while the actions were blatantly illegal, it was 'not important enough' of a violation to order the school board to stop acting in secret. As a result, my clients were denied reimbursement of their attorney fees and costs, *despite* a clear court ruling that secret email deliberations were illegal.

While personally if I were a judge, I would have ordered the school board to never use that process again because it is illegal and contrary to principles of good government. Instead, the local circuit court opted to order nothing and it resulted in a substantial bill to my clients which they, as mere concerned local parents, cannot afford to pay.

Think about that—citizens must hire and pay a private attorney to get their government to obey the law. The decision in *Speicher* did this to them.

Since that time, the ability for attorneys like me to help private citizens who have suffered the result of illegal actions of local boards has been rendered minimal. As such, many known and on-going violations simply go unchecked and unchallenged.

I advocate in the strongest terms possible that legislation be enacted to fix this undesirable result. HB4766 does just that. In enacting the *Open Meetings Act*, prior judicial decisions have recognized that the *Open Meetings Act* was created to insure an open and accountable government. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 192 Mich App 574, 580; 481 NW2d 778 (1992). Because the original act initially failed to provide for an enforcement mechanism or penalties for noncompliance, the modern OMA was enacted in 1976 to remedy the oversight and "promote a new era in governmental accountability." *Booth v Univ of Michigan Bd of Regents*, 444 Mich 211, 222; 507 NW2d 422 (1993). Now the Supreme Court by its *Speicher* decision has gutted those enforcement mechanisms in place for over 30 years using a legal technicality.

On behalf of the welfare and interests of the citizenry and myself personally as an open government advocate, I implore you and your committee members to support and pass HB4766, overturn the Supreme Court's misinterpretation, and make needed corrections to just one single section of the Act, MCL 15.271(4), to restore and strengthen the rights of successful litigants, like the parents in Algonac, when a public body violates its solemn public duty to act in an open, honest, and accountable manner.

The lack of an award of attorney fees and costs for successful prosecutions strictly and harshly limits the ability to seek justice and fairness to only those who can afford to hire an attorney at today's expensive legal rates. In practical respect, no attorney fees means no way for average Michiganders to secure their rights to open and transparent government even when a local public body is patently violating the *Open Meetings Act* because clear violations will not guarantee an injunction or reimbursement of their litigation costs.

I thank the Committee for its time and consideration into this important issue.

Best regards,

Philip L Ellison

Philip L. Ellison, MBA, JD, Esq.
Attorney at Law

Outside Legal Counsel

CC: Hon. Martin Howrylak, Michigan House of Representatives
Hon. Rose Mary Robinson, Michigan House of Representatives
Hon. Shane Hernandez, Michigan House of Representatives
Hon. Adam Zemke, Michigan House of Representatives
Hon. Phil Phelps, Michigan House of Representatives
Hon. Aaron Miller, Michigan House of Representatives

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

CITIZENS FOR A BETTER ALGONAC COMMUNITY SCHOOLS and HEIDI CAMPBELL,

Plaintiffs,

Case No. 14-001371-CZ

v.

Hon. Daniel J. Kelly

ALGONAC COMMUNITY SCHOOLS,

Defendant.

OPINION ON MOTIONS FOR SUMMARY DISPOSITION

Plaintiffs filed this action alleging that the Defendant failed to provide public deliberations concerning contract negotiations for a newly selected school superintendent in violation of the Open Meetings Act, MCL 15.263(3). They seek a declaration by the Court that a violation occurred and an order enjoining Defendant from further violations.

Plaintiffs now seek summary disposition under MCL 2.116 (C)(9) and (C)(10). A motion under MCL 2.116 (C)(9) may be granted if the Court finds that a defendant's pleadings fail to allege a valid defense to the claim. A motion under MCL 2.116 (C)(10) may be granted if the Court finds no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law.

The Defendant also seeks summary disposition under MCL 2.116(I)(2). Under this rule if it appears to the Court that the opposing party, rather than the moving party, is entitled to judgment, the Court may render judgment in favor of the opposing party.

After giving full consideration to the law and arguments presented, this Court finds that the Plaintiffs are entitled to summary disposition.

Background

Following a series of interviews of several candidates for the position of school superintendent, each held at meetings open to the public, the Defendant board offered the position to Dr. John Strycker at its meeting on April 1, 2014. The board president, Andrew Goulet, thereafter began contract negotiations on behalf of the board. At the April 28, 2014 meeting of the board a contract was approved unanimously.

At issue is not the selection of the new superintendent, nor the approval of the contract. Both occurred at public meetings. What is at issue is the series of emails sent by the board president to other members of the board during the negotiations. Plaintiffs contend that these emails constituted either "discussions" or "deliberations" in violation of the OMA. Defendant responds that the emails constituted only a series of status updates concerning the progress of the negotiations.

Critical to the analysis of this issue is the fact that the board president sought information from individual members as to specific terms, including salary, steps and a three-year evergreen. Additionally, two members replied to the email chain with other concerns. While Mr. Goulet did not respond to these inquiries within the email postings, it is apparent that he discussed these concerns with the individual members privately, as they were resolved by the time that the final draft was presented to the board as a whole.

The Open Meeting Act mandates that all deliberations of a public body shall take place at a meeting open to the public subject to few exceptions. None of those exceptions are asserted in this case. Within the meaning of this Act, "deliberations" has been defined as "the act of carefully considering issues and options before making a decision." *Ryant v. Cleveland Township*, 239 Mich App 430, 434; 608 NW2d 101 (2000).

In this case, there is nothing on the record to reflect any consensus as to the terms of a contract at the April 1, 2014 meeting. Any consensus that was developed came through a chain of email correspondence and individual conversations.

The email chain began with a communication from Goulet to his fellow board members on April 4, 2014. It apparently followed a conversation with the board's legal counsel, Gary Fletcher. As contained in Plaintiff's Exhibit 2, it began:

> *You will recall that I spoke with Gary Wednesday and he had asked me for three pieces of information, (Salary?, Steps?, 3 year evergreen?), and told me once I communicated that information to him he would get a draft out to me.*
>
> *Attached find a memo containing that information gleaned from my conversations with each of you that I sent to Gary last night.*

I did talk with John and he is agreeable to the terms and especially looks forward to a performance challenge.

That's the latest. I will keep you posted once the draft arrives.

Barring any unforeseen problem, I plan to have this contract on the agenda for approval at our regular April meeting.

Questions/comments ... please call me.

A memo attached to this email was sent to legal counsel stating that the "board is in concurrence at this time on the information you and I discussed on Wednesday". The memo then lists the following:

Salary: $137,000
Steps: NO
3 year "evergreen": YES

Additionally:

The board wants to do an annual "performance bonus" of $2,000, based upon criteria/standards/goals set by the board or committee of the board. Your thoughts on how to do this?

If John desires to work some days after Brian Brutyn leaves and before July 1, is there a way to pay him per diem for any days he works for ACS? And if so, how do we have that written and where?

With this information a draft contract was prepared and was provided to the entire board in a second mass electronic communication on April 8, in which Goulet stated that *"This is exactly what I discussed with each of you. If you believe it is not the case, let me know immediately."* Subsequently, several members take issue, raise concerns, and make inquiries of Goulet.

Board member Chuck Busuttil replied to all in the email chain with concerns about the severance package and his desire to separate it from being tied to sick days.

Board member Sharon Stiltner also responded to all with concerns about timely submissions of claims for reimbursement.

Board member Busuttil later asked if Goulet: *"Based on what we discussed earlier today, can you produce a "final draft" so that it can be reviewed by all Board members? I think it wise that we are all in agreement on this."* Board president Goulet

responded that a draft is *"coming soon"* from legal counsel and that *"we also talked of the board at a future time coming up with a 'longevity' piece."*

Board president Goulet subsequently sent out a proposed contract to all with the comment *"How's this?"* Board member Busuttil still had questions concerning the severance terms, seeking comments.

On April 28, 2014 at a regular meeting of the Board of Education the contract was submitted for approval. The terms were not read aloud. There was no discussion. There was no debate. The motion passed unanimously.

Analysis

Plaintiffs claim that the entire contract was deliberated and debated outside the view of the public before the April 28 meeting. The Michigan Open Meetings Act requires "all meetings of a public body shall be held in a place available to the general public." MCL 15.263 (1). The issue is whether the emails and individual conversations constitute a meeting, and if so, whether the Board members deliberated or rendered a decision during the meeting.

Pursuant to the Act, a "meeting" is defined as "the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy." MCL 15.262(b). Michigan courts have defined "deliberating" as the act of "carefully considering issues and options before making a decision or taking some action; esp., the process by which a jury reaches a verdict; as by analyzing, discussing and weighing the evidence." *Ryant v. Cleveland Twp*, 239 Mich App 430, 434 (2000). The word "discussion" is defined as the act of exchanging views on something, a debate. *Id.*

Defendant relies upon the principle set forth in *St. Aubin v Ishpeming City Council*, 197 Mich App 100; 194 NW2d 803 (1992) that informal discussions among members of a public body do not violate the OMA if no decision is made during the discussions and the intent of the discussions is not to violate the OMA. In that case the mayor held individual discussions with each council member prior to the meeting as to their position on whether to retain or discharge the city manager. The Court of Appeals held that "an informal canvas by one member of a public body to find out where the votes would be on a particular issue, is not violative of the OMA." *Id.* at 103

Similarly, in the *Ryant* case the Court of Appeals held that because there was no record that any township board members present at the planning commission meeting had exchanged any affirmative or opposing views, debated the proposed amendment, or engaged in any discussion regarding the statements made by the township supervisor,

they were present merely as "observers", even though they constituted a quorum of the township board.

Here the facts are significantly different than either of those cases. The members of the city council in *Ryant* were informally asked their views in a one to one context. In this case there was a formal email sent to all members of the board which not only gave a status update but also invited questions which were addressed and resulted in actual changes to the initial proposed contract. The fact that they were not addressed as part of the email chain does not provide protection but rather demonstrates intent to evade the requirements of the Open Meetings Act.

This Court finds, therefore, that the Algonac Community Schools Board of Education violated the Open Meetings Act by conducting deliberations for the new school superintendent outside of a public meeting as required.

Although there have been no reported cases involving email communications per se, this is an area of concern that has been noted by our Attorney General. Plaintiff's counsel cites to the OMA Handbook provided by that office which notes that:

> *Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.*

Nowadays, group texting and group emailing have become more common than telephone conference calls. But they often serve the same purpose. Therefore, public officials need to be vigilant to avoid communications that run afoul of this Act.

Relief

Plaintiffs have not sought to void the employment contract for the school superintendent. What is sought is a declaration that the Board violated the OMA and an order enjoining further non-compliance with the Act. Section 11 of the OMA, MCL 15.271, provides in pertinent part for injunctive relief:

(1) If a public body is not complying with this act ... a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

The criteria for determining the necessity or appropriateness of issuing an injunction for violations of the Open Meetings Act has been addressed by the courts on several occasions. In *Nichols v. Meridian Twp Bd*, 239 Mich App 525, 533-534; 609 NW2d 574 (2000), the Court noted:

> Merely because a violation of the OMA has occurred does not automatically mean that an injunction must issue restraining the public body from using the violative procedure in the future. *Esperance, supra.* Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury. *Wilkins v. Gagliardi*, 219 Mich App 260,276; 556 NW2d 171 (1996). ...
>
> In *Wilkens, supra* at 276, a panel of this Court concluded that where the OMA problems have been addressed and no similar incidents have occurred, it could be concluded that no real and imminent danger existed and that it was appropriate to refrain from imposing a permanent injunction. Where there is no reason to believe that a public body will deliberately fail to comply with the OMA in the future, injunctive relief is unwarranted. *Schmiedicke v Clare School Bd*, 228 Mich App 259, 267; 577 NW2d 706 (1998).

Viewing the facts of this case in light of the criteria provided by our appellate courts, it would appear inappropriate to grant any form of injunctive relief at this point. Plaintiffs have failed to show that this practice has occurred in the past or that it continues at the present time. Nor has there been evidence supporting the contention that unless otherwise enjoined it will persist in the future.

The Court notes, as it was acknowledged during arguments, that Plaintiff Heidi Campbell has recently been elected to the board of the Algonac Community Schools. Thus, she will be in a better position than anyone else to assure that the board complies with the Open Meetings Act from this point forward.

The denial of injunctive relief precludes any awards to Plaintiff for costs or actual attorney fees despite the declaratory relief granted because of a decision this past month by the Michigan Supreme Court. Plaintiff's counsel acknowledged the decision alters the landscape of OMA cases.

In *Speicher v. Columba Twp Bd of Trustees*, ____ Mich ____ No. 148617 (2014), the Court addressed the question of whether costs and fees may be awarded under the Act if only declaratory relief is granted. The holding was:

> In sum, when considering both the plain meaning of the critical phrase in context as well as its placement and purpose in the statutory scheme, MCL 15.271 limits the award of attorney fees to cases in which the public body persists in violating the act, a suit is brought to enjoin such behavior, and the suit is successful in obtaining injunctive relief. Accordingly, we conclude that the phrase "succeeds in obtaining relief in the action" necessarily mandates that the plaintiff succeed in obtaining *injunctive* relief, not just any relief, in order to be entitled to court costs and actual attorney fees under MCL 15.271(4).

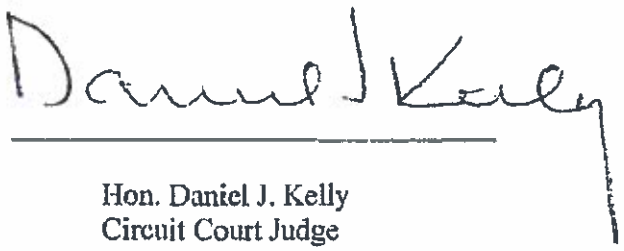
Conclusion

Summary disposition is granted to the Plaintiffs under MCR 2.116 (C)(9) and (C)(10) as this Court finds that there is no valid defense to the claim and that no genuine issue of material fact exists that would require trial. As a consequence, Defendant's motion for summary disposition under MCR 2.116(I)(2) is denied.

However, Plaintiffs' request for injunctive relief is denied. As a consequence, Plaintiffs' request for costs and attorney fees is denied.

An order consistent with this ruling may be submitted for entry as provided by court rule.

January 29, 2015



Hon. Daniel J. Kelly
Circuit Court Judge

860 N.W.2d 51 (2014)
497 Mich. 125

SPEICHER

v.

COLUMBIA TOWNSHIP BOARD OF TRUSTEES.

Docket No. 148617.

Supreme Court of Michigan.

Argued October 8, 2014.
Decided December 22, 2014.

52 *52 Warner Norcross & Judd LLP, Grand Rapids (by John J. Bursch) and Silverman, Smith & Rice, PC, Kalamazoo (by Robert W. Smith), for Kenneth J. Speicher.

Plunkett Cooney, Detroit (by Mary Massaron, Hilary A. Ballentine, and Robert A. Callahan) for the Columbia Township Board of Trustees and the Columbia Township Planning Commission.

Bauckham, Sparks, Lohrstorfer, Thall & Seeber, PC, Kalamazoo (by Robert E. Thall), for the Michigan Townships Association and the Michigan Municipal League.

Outside Legal Counsel PLC, Hemlock (by Philip L. Ellison) for Outside Legal Counsel PLC and Philip L. Ellison.

VIVIANO, J.

In this Open Meetings Act (OMA)[1] case, defendants Columbia Township Board of Trustees and Columbia Township Planning Commission appeal the Court of Appeals' decision holding that plaintiff Kenneth Speicher was entitled to an award of court costs and actual attorney fees based on his entitlement to declaratory relief under the OMA. The Court of Appeals reached this decision only because it was compelled to do so by Court of Appeals precedent.[2] If not for this binding precedent, the Court of Appeals would have denied plaintiff's request for court costs and actual attorney fees on the ground that the plain language of MCL 15.271(4) does not permit such an award unless the plaintiff obtains injunctive relief. We agree with the Court of Appeals that prior decisions of that court have strayed from the plain language of MCL 15.271(4). Therefore, we reverse the Court of Appeals opinion and order issued December 19, 2013, and reinstate the portion of its January 22, 2013 decision regarding court costs and actual attorney fees.

I. FACTS AND PROCEDURAL HISTORY

In early 2010, the Columbia Township Board of Trustees (the Board) adopted a resolution that fixed the regular monthly meetings of the Board and the Columbia Township Planning Commission (the Planning Commission) for the year 2010-2011. However, during the regularly scheduled October 18, 2010 meeting, the Planning Commission adopted another resolution that it would conduct quarterly, rather than monthly, meetings beginning January 2011. According to the Township Clerk, after the Planning Commission adopted the new schedule, she contacted a local newspaper, the *South Haven Tribune,* and requested publication of the new meeting schedule. She stated that she also posted a revised meeting schedule at the Township Hall entrance with the February and March 2011 meetings whited out.

Plaintiff is a property owner in the township. According to plaintiff, he had no notice of the new quarterly meeting schedule, and he appeared for the meetings in February and March 2011, seeking to raise a number of issues before the Planning Commission. Plaintiff claimed that the posted schedule did not reflect the change to quarterly meetings and no notices appeared in the *South Haven Tribune* prior to those previously scheduled meetings.

53 Plaintiff sued defendants, alleging that the decision to change the schedule was *53 not made at an open meeting[3] and that the February and March meetings were canceled without proper notice in violation of the OMA.[4] Plaintiff alleged that, as a result of the meetings not being held, his right to present certain concerns to the Planning Commission was impaired.[5] Plaintiff sought a

declaration that the Planning Commission's decision to cancel the regularly scheduled meetings was made in violation of the OMA, and he sought to enjoin the Planning Commission and the Board from further noncompliance with the OMA.[6] Plaintiff also cited MCL 15.271(4) and alleged that "if this Court grants relief as a result of this complaint, [plaintiff] shall recover court costs and actual attorney fees for this action."

Finding that defendants' conduct was not actionable, the trial court denied plaintiff's motion for summary disposition and granted summary disposition to defendants. The trial court also denied plaintiff's motion for reconsideration. The trial court ruled that defendants did not violate the OMA because plaintiff was not denied access to any meetings. To the extent that notice may not have been timely posted, this was a technical violation not entitling plaintiff to relief. The trial court acknowledged that the notice cancelling the February and March Planning Commission meetings "may not have been done in strict compliance with" the OMA, but the court concluded that any violations were "technical in nature, and did not impair the rights of the public in having their governmental bodies make decisions in an open meeting." Plaintiff had, at most, been inconvenienced by the failure to post timely notice of the meeting changes given that "[p]laintiff had the option of bringing his concerns to the Planning Commission at its next regularly scheduled meeting."

Plaintiff appealed in the Court of Appeals, which affirmed in part and reversed in part in an unpublished opinion.[7] The Court of Appeals concluded that while the meeting schedule change was properly made at an open meeting, defendants plainly violated the OMA by not timely posting the modified schedule. It therefore held that the trial court erred by failing to grant declaratory relief to plaintiff on that point. However, the Court of Appeals also held that the trial court properly denied injunctive relief for
54 defendants' technical notice violation because "there *54 was no evidence that the Commission had a history of OMA violations, there was no evidence that this violation was done willfully," and there was no evidence that the public or plaintiff was harmed in any manner.[8] The Court of Appeals therefore ruled that "given that the technical nature of this OMA violation resulted in no injunctive relief being warranted, plaintiff is not entitled to any attorney fees or costs under MCL 15.271(4) on remand."[9]

Plaintiff moved for reconsideration, arguing that because the Court of Appeals had held that he was entitled to declaratory relief under the OMA, he was entitled to an award of court costs and actual attorney fees under MCL 15.271(4). The Court of Appeals granted reconsideration and vacated the portion of its unpublished opinion regarding attorney fees.[10] In a published opinion, the Court of Appeals then held that plaintiff was entitled to court costs and actual attorney fees under existing case law because he established entitlement to declaratory relief.[11] However, the Court of Appeals reached this conclusion only because it was bound by court rule to follow prior published Court of Appeals decisions.[12] The Court explained that the rule that court costs and actual attorney fees were available whenever a plaintiff files a lawsuit seeking injunctive relief under MCL 15.271 and obtains some form of relief had developed from the misapplication of a prior Court of Appeals decision issued in 1981, *Ridenour v. Dearborn Bd. of Ed.*[13] However, the Court determined that this rule was unsupported by the plain language of MCL 15.271(4)
55 and that the cases that developed this rule often did not provide any substantive analysis.[14] Were the Court of Appeals *55 free to decide the issue as it deemed appropriate, it would have denied attorney fees and costs under MCL 15.271(4) because the statute permits such an award *only* when a plaintiff prevails on a request for injunctive relief, which did not occur in this case.[15]

Defendants sought review in this Court, asserting that the Court of Appeals erred by awarding plaintiff court costs and actual attorney fees but correctly reasoned that such costs and fees were improper because plaintiff did not obtain injunctive relief as required by MCL 15.271(4). Plaintiff responded, contending that MCL 15.271(4) expressly requires an award of court costs and actual attorney fees when a plaintiff obtains any relief, not just injunctive relief. In lieu of granting leave, we ordered oral argument on the application, directing the parties to address

> whether MCL 15.271(4) authorizes an award of attorney fees and costs to a plaintiff who obtains declaratory relief regarding claimed violations of the Open Meetings Act (MCL 15.261 *et seq.*), or whether the plaintiff must obtain injunctive relief as a necessary condition of recovering attorney fees and costs under MCL 15.271(4).[16]

II. STANDARD OF REVIEW

Issues of statutory interpretation are reviewed de novo.[17] In interpreting a statute, we consider "both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme."[18] As with any statutory interpretation, our goal is to give effect to the intent of the Legislature by focusing on the statute's plain language.[19]

III. ANALYSIS

At issue in this case is the proper interpretation of the phrase "succeeds in obtaining relief in the action" in MCL 15.271(4). This Court has not yet addressed whether that phrase refers to *injunctive* relief, as defendants contend and the Court of Appeals panel would have held, or to *any* relief, as plaintiff contends and the *Ridenour* line of cases have held.[20] Unlike the Court of Appeals below, we are not bound by the prior Court of Appeals decisions. Therefore, we are able to independently assess the relevant statutory language to determine whether the Court of Appeals has properly interpreted MCL 15.271(4). For the reasons stated below, we agree with defendants and the Court of Appeals panel that court costs and actual attorney fees under MCL 15.271 may only be awarded when a plaintiff *seeks and obtains* injunctive relief.

56 Under the OMA, public bodies must conduct their meetings, make all of their decisions, and conduct their deliberations *56 (when a quorum is present) at meetings open to the public.[21] The OMA also requires public bodies to give notice of their regular meetings and changes in their meeting schedule in the manner prescribed by the act.[22] If a public body has failed to comply with the requirements of the act, in addition to authorizing enforcement actions by the attorney general or local prosecuting attorney, the OMA also allows for any person to commence a civil action.[23] The OMA creates a three-tiered enforcement scheme for private litigants:

(1) Section 10 of the OMA allows a person to file a civil suit "to challenge the validity of a decision of a public body made in violation of this act."[24] Subsection (2) specifies when a decision may be invalidated, and Subsection (5) allows a public body to cure the alleged defect by reenacting a disputed decision in conformity with the OMA. Notably, § 10 does not provide for an award of attorney fees or costs.

(2) If a public body is not complying with the OMA, § 11 allows a person to file a civil suit "to compel compliance or to enjoin further noncompliance with this act."[25] Subsection (4) provides for an award of court costs and actual attorney fees when three conditions are met: (a) a public body is not complying with the act; (b) a person files "a civil action against the public body for injunctive relief to compel compliance or enjoin further noncompliance with the act"; and (c) the person "succeeds in obtaining relief in the action[.]"[26] The meaning of this latter phrase is the crux of this case.

(3) Finally, § 13 provides that a public official who intentionally violates the OMA is "personally liable in a civil action for actual or exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees. . . ."[27]

As an initial matter, "these sections, and the distinct kinds of relief that they provide, stand alone."[28] This is an important point because "[t]o determine whether a plaintiff may bring a cause of action for a specific remedy, this Court must determine whether [the Legislature] intended to create such a cause of action."[29] When a statute, like the OMA, "gives new rights and prescribes new remedies, such remedies must be strictly pursued; and a party seeking a remedy under the act is confined to the remedy conferred thereby and to that only."[30]

Plaintiff does not seek to invalidate any action by defendants or make a claim for personal liability against a public official. Therefore, we must train our focus on § 11 of the OMA to determine if it provides an adequate basis for the Court of Appeals' award of court costs and actual attorney fees in this case.[31] MCL 15.271 provides as follows:

57 *57 (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in

obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

At the outset, we acknowledge that, in isolation, the phrase "relief in the action" in MCL 15.271(4) could potentially refer to more than one type of relief because "it is well established that `we may not read into the statute what is not within the Legislature's intent as derived from the language of a statute.'"[32] However, "it is equally well established that to discern the Legislature's intent, statutory provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole."[33] An attempt to segregate any portion or exclude any portion of a statute from consideration is almost certain to distort legislative intent.[34] Therefore, plaintiff's strained reading of an excerpt of one sentence must yield to context. If, when reading the statute as a whole, it is apparent that "relief in the action" refers to injunctive relief, we should not circumscribe our analysis to one clause of the sentence.

Looking to the plain language of MCL 15.271(4), we believe it is clear that the Legislature only intended for a person to recover
58 court costs and actual attorney fees if the person succeeds in obtaining injunctive relief.[35] The first statutory condition, *58 "[i]f a public body is not complying with this act," contemplates an ongoing violation, precisely the circumstances in which injunctive relief is appropriate. The second condition, i.e., commencement of "a civil action against the public body for injunctive relief to compel compliance or enjoin further noncompliance with the act," directly refers to and obviously requires that a party seek injunctive relief. And the third condition, i.e., a requirement that a party who files an action seeking such relief "succeeds in obtaining relief in the action," cannot be divorced from the phrases that precede it.[36]

Plaintiff makes much of the fact that, in this latter phrase, the Legislature did not specifically modify the word "relief" with the word "injunctive," and argues that this means that *any* relief obtained for a violation of the OMA mandates an award of attorney fees and costs. However, by its plain language, MCL 15.271(4) requires that the plaintiff succeed "in obtaining relief *in the action*." We find it significant that the phrase "relief in *the* action" employs the definite article, "the."[37] Use of that word, which we read as having a "specifying or particularizing effect,"[38] indicates a legislative intent to refer to an action seeking *injunctive* relief and subsequently obtaining such relief. That is, given that the relevant phrase, "relief in *the* action," immediately follows the phrase "a person commences a civil action against the public body for *injunctive* relief," the phrase "relief in *the* action" must also be construed as referring to injunctive relief. Obtaining relief other than injunctive relief merely because, or as result, of the action is insufficient to meet the requirement of the statute.[39]

Moreover, even though the Legislature did not modify the word "relief" with the word "injunctive" in the particular phrase at issue, use of the word "injunctive" when again referring to "relief" was unnecessary. This Court was faced with an almost identical problem in *Robinson v. City of Lansing*: the Legislature modified a noun, but omitted the modifier from its subsequent use of the noun.[40] The defendant City argued that the Legislature's failure to qualify "highway" as a "county highway" in MCL 691.1402a(2) meant that the 2-inch rule applied to all improved portions of highways designed for vehicular travel.[41] Plaintiff,
59 on the other hand, *59 asserted that the "highway" in Subsection (2) must be a "county highway" as framed by Subsection (1) (meaning it did not apply to the state highway where she was injured).[42] This Court sided with the plaintiff, stating that "a reasonable person reading this statute would understand that all three subsections of this provision apply only to *county* highways."[43]

The same analysis applies here. Subsection (4) specifically refers to and is limited to injunctive relief by use of the word "injunctive" in the preceding phrase, "a civil action against the public body for *injunctive* relief[.]" Because the word "relief" appears twice in the same sentence, only a strained reading of a portion of that sentence prevents the obvious conclusion that the second mention of "relief" is in direct reference to the first. The Legislature was not required to restate the modifier, "injunctive," when again referring to the noun, "relief," as the modifier was already sufficiently incorporated into the statute and, when read in context, was implied when the Legislature subsequently used the word "relief."[44] A reasonable reader of MCL 15.271(4) would understand that when a plaintiff "commences a civil action . . . for injunctive relief," the plaintiff is required to "succeed[] in obtaining [*injunctive*] relief in the action" to be entitled to court costs and actual attorney fees.

Our conclusion is reinforced by viewing MCL 15.271 as a whole. The statute allows a person to seek injunctive relief to compel compliance or to enjoin further noncompliance with the OMA.[45] The statute then provides the proper venue in which to commence an action for injunctive relief.[46] And finally, the statute allows for a person to recover court costs and actual attorney fees for an action against the public body for injunctive relief if a person "succeeds in obtaining relief in the action."[47] Thus, as a whole, MCL 15.271 only speaks in terms of an injunctive relief and contemplates no other form of relief.[48]

60 *60 Plaintiff's interpretation of the statute does not comport with the statutory scheme. According to plaintiff's theory, a party can satisfy the second condition of the statute simply by requesting injunctive relief—regardless of whether such claim has any legal merit. And, according to plaintiff, as long as a party receives any type of relief, the party has satisfied the third condition of the statute—regardless of whether the relief arises from another section of the OMA or has a separate legal basis altogether. We cannot conclude that this is what the Legislature intended simply by omitting an implied modifier. Rather, a party seeking a remedy under the OMA is confined to the remedy provided under the applicable section of the act—here, MCL 15.271.[49] A party cannot simply assert a meritless claim for injunctive relief under MCL 15.271 in the hope that one of its other claims will yield some fruit, and then bootstrap its claim for court costs and actual attorney fees on the other relief provided.

In sum, when considering both the plain meaning of the critical phrase in context as well as its placement and purpose in the statutory scheme, MCL 15.271 limits the award of attorney fees to cases in which the public body persists in violating the act, a suit is brought to enjoin such behavior, and that suit is successful in obtaining injunctive relief. Accordingly, we conclude that the phrase "succeeds in obtaining relief in the action" necessarily mandates that the plaintiff succeed in obtaining *injunctive* relief, not just any relief, in order to be entitled to court costs and actual attorney fees under MCL 15.271(4).

In so holding, we acknowledge the line of contrary holdings of the Court of Appeals. But, for the reasons explained above, the *Ridenour* court and the cases that followed it impermissibly strayed from the plain language of MCL 15.271(4).[50] There is no allowance in the statute for obtaining the *equivalent* of relief—rather the plaintiff must obtain injunctive relief, as sought in commencing the action.[51] The Court of Appeals has unfortunately perpetuated this error in numerous cases since *Ridenour*.[52] Because these decisions have incorrectly extended the entitlement to court costs and actual attorney fees beyond the scope articulated by the Legislature, we overrule *Ridenour* and its progeny to the extent that those cases allow for the recovery of attorney fees and costs under MCL 15.271(4) when injunctive relief was not obtained, equivalent or otherwise.

IV. APPLICATION

61 Plaintiff commenced a civil action against the Board and Planning Commission *61 that sought to enjoin the Planning Commission and the Board from further noncompliance with the OMA under MCL 15.271. However, both the trial court and the Court of Appeals agreed that plaintiff failed to sustain his burden to show that he was entitled to an injunction. As the Court of Appeals explained in its January 2013 opinion, "there was no evidence that the Commission had a history of OMA violations,[53] there was no evidence that this violation was done willfully," and there was no evidence that the public or plaintiff was harmed in any manner.[54] Although the Court of Appeals concluded that plaintiff was nevertheless entitled to declaratory relief for defendants' notice violation, he is not entitled to receive court costs and actual attorney fees because he did not succeed in obtaining injunctive relief in the action, as MCL 15.271(4) requires.

V. CONCLUSION

We hold that a person cannot recover court costs and actual attorney fees under MCL 15.271(4) unless he or she succeeds in obtaining injunctive relief in the action. Accordingly, we reverse the Court of Appeals opinion and order issued December 19, 2013, and reinstate the portion of the Court of Appeals decision issued January 22, 2013, regarding court costs and actual attorney fees.

YOUNG, C.J., and MARKMAN, KELLY, ZAHRA, and McCORMACK, JJ., concurred with VIVIANO, J.

CAVANAGH, J. (dissenting).

Shortly after the enactment of the Open Meetings Act (OMA), MCL 15.261 *et seq.*, the Court of Appeals effectively held that declaratory relief granted in lieu of or as the functional equivalent of an injunction supports an award of costs and actual attorney fees under MCL 15.271(4). See *Ridenour v. Dearborn Bd. of Ed.*, 111 Mich.App. 798, 314 N.W.2d 760 (1981). Over the past 33 years, the Court of Appeals has reiterated that holding in numerous published opinions, solidifying the role of declaratory relief as it relates to costs and attorney fees under MCL 15.271(4). Despite this long line of precedent, at no time has the Legislature taken steps to amend MCL 15.271(4) in response. Because I believe that these cases properly interpreted and effectuated the Legislature's intent, I respectfully dissent.

In 1968, the Legislature enacted an open meetings law to consolidate a "patchwork of statutes" that required accountability and openness in governmental affairs. *Booth v. Univ. of Mich. Bd. of Regents*, 444 Mich. 211, 221, 507 N.W.2d 422 (1993). By rendering the decision-making process of most public bodies open and accessible to the public, the 1968 statute was intended to act as "'an important check and balance on self-government.'" *Id.* at 223, 507 N.W.2d 422, quoting Osmon, *Sunshine or Shadows: One State's Decision*, 1977 Det. C. L. Rev. 613, 617. Specifically, by addressing a longstanding concern regarding the
62 public's access to governmental *62 decision-making,[1] the statute's aim was to "'serve as both a light and disinfectant in exposing potential abuse and misuse of power.'" *Booth*, 444 Mich. at 223, 507 N.W.2d 422, quoting *Sunshine or Shadows*, 1977 Det. C. L. Rev. at 617. Although the goals of the 1968 statute were laudable, the statute was flawed: "because the 1968 statute failed to impose an enforcement mechanism and penalties to deter noncompliance, nothing prevented the wholesale evasion of the act's provisions" by public bodies, and the law was often ignored. *Booth*, 444 Mich. at 221, 507 N.W.2d 422. See, also, *Sunshine or Shadows*, 1977 Det. C. L. Rev. at 619. To remedy this, the statute was "comprehensively revise[d]" in 1976 to provide for enforcement by way of several mechanisms, including actions by private citizens to vindicate, not primarily personal rights, but the rights of the public at large. *Booth*, 444 Mich. at 222, 507 N.W.2d 422. One such enforcement provision is MCL 15.271(4), which provides that a successful party is entitled to court costs and actual attorney fees. Specifically, MCL 15.271(4) states:

> If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

At issue in this case is whether the statutory phrase "succeeds in obtaining relief in the action" encompasses more than formal injunctive relief. Stated another way, at issue is whether the Court of Appeals has correctly effectuated the Legislature's intent by holding that the absence of formal injunctive relief does not preclude a plaintiff from recovering statutory attorney fees and costs under MCL 15.271(4). Considering the purposes behind the OMA, including the Legislature's conscious choice to enact a citizen enforcement provision aimed at ensuring compliance with the OMA, I cannot conclude that the last 33 years of Court of Appeals precedent was in error.

As previously noted, four years after the effective date of MCL 15.271(4), the *Ridenour* panel effectively held that declaratory relief granted in lieu of or as the functional equivalent of an injunction supports an award of costs and actual attorney fees under the statute. In *Ridenour*, the plaintiff sought to enjoin the defendant from holding a closed meeting. Although the trial court determined that the defendant's proposed conduct would violate the OMA, it determined that injunctive relief was not necessary in light of the defendant's promise that it would comply with the trial court's decision. *Ridenour*, 111 Mich.App. at 801, 314 N.W.2d 760. Despite the trial court's decision to deny the plaintiff's request for injunctive relief on that basis, it granted the plaintiff's request for costs and attorney fees under MCL 15.271(4), reasoning that the relief that the plaintiff obtained was "the equivalent of an injunction." *Id.* at 801, 314 N.W.2d 760. On appeal, the Court of Appeals affirmed the award of costs and attorney fees explaining, "No matter how it is viewed, plaintiff received the relief he sought. The [trial court] agreed with plaintiff's position and gave a judgment in his favor." *Id.* at 806, 314 N.W.2d 760.

63 Subsequent panels of the Court of Appeals have followed *Ridenour*, reasoning *63 that, under MCL 15.271(4), "neither proof of injury nor issuance of an injunction is a prerequisite for the recovery of attorney fees under the OMA"; rather, under the language of MCL 15.271(4), a "plaintiff need only `succeed in obtaining *relief* in the action,'" and, therefore, declaratory relief, as a form of relief, is necessarily sufficient. *Herald Co., Inc. v. Tax Tribunal*, 258 Mich.App. 78, 92, 669 N.W.2d 862 (2003), quoting MCL 15.271(4) (emphasis added).[2] Accordingly, for more than three decades, the Court of Appeals has repeatedly held that declaratory relief granted in lieu of an injunction or that is the functional equivalent of an injunction is sufficient to trigger an award of attorney fees and costs because, in such cases, the plaintiff has "succeeded in obtaining relief in the action," which is all that MCL 15.271(4) requires.

Despite the clear holdings of the Court of Appeals, the Legislature has not amended MCL 15.271(4) or otherwise taken any action to signal its disapproval of *Ridenour* and its progeny, even though the Legislature has made numerous amendments to other provisions of the OMA. I continue to find relevant the well-established presumption that the Legislature is aware of statutory interpretations by this Court and the Court of Appeals. See *Ford Motor Co. v. City of Woodhaven*, 475 Mich. 425, 439-440, 716 N.W.2d 247 (2006); *Gordon Sel-Way, Inc. v. Spence Bros., Inc.*, 438 Mich. 488, 505-506, 475 N.W.2d 704 (1991).[3] Consequently, in my view, the Legislature's silence on this topic since 1981 is a strong indication that the Court of Appeals has properly effectuated the Legislature's intent, in accordance with that primary goal of statutory interpretation. *In re MCI Telecom. Complaint*, 460 Mich. 396, *64 411, 596 N.W.2d 164 (1999); *Craig v. Larson*, 432 Mich. 346, 353, 439 N.W.2d 899 (1989). While
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the Legislature may not be required to "cumbersomely repeat language that is sufficiently incorporated into a statute," *Robinson v. Lansing*, 486 Mich. 1, 16-17, 782 N.W.2d 171 (2010), the Legislature also unquestionably has the ability to correct judicial interpretations that it believes are contrary to its intent. The fact that the Legislature has long acquiesced to *Ridenour* and its progeny, despite numerous intervening amendments to the OMA, is, in my opinion, compelling.[4]

Indeed, the interpretation of the statutory language in *Ridenour* and its progeny is consistent with the purpose of MCL 15.271(4) and the history of the OMA, both of which are relevant considerations in discerning the Legislature's intent. *In re Certified Question*, 433 Mich. 710, 722, 449 N.W.2d 660 (1989); *Booth*, 444 Mich. at 223-224, 507 N.W.2d 422. To begin, it is entirely reasonable to presume that public bodies will adhere to the law as declared by a court. Cf. *Straus v. Governor*, 459 Mich. 526, 532, 592 N.W.2d 53 (1999) (noting that declaratory relief is generally sufficient to induce the legislative and executive branches to comply with the law); *Florida v. U.S. Dep't of Health & Human Servs.*, 780 F.Supp.2d 1307, 1314, 1316 (N.D.Fla., 2011) (noting the longstanding presumption that federal officials will follow the law as declared by a court). In fact, a judgment for declaratory relief constitutes a binding and conclusive adjudication of the rights and status of the litigants. *Black's Law Dictionary* (6th ed). Thus, a declaratory judgment has the force and effect of a final judgment. MCR 2.605(E). It is a "real judgment, not just a bit of friendly advice," and, as one court has noted, those who try to evade it will likely "come to regret it." *U.S. Dep't of Health & Human Servs.*, 780 F.Supp.2d at 1316, quoting *Badger Catholic, Inc. v. Walsh*, 620 F.3d 775, 782 (C.A.7, 2010).[5] "If it were otherwise, a . . . declaratory judgment would serve no useful purpose as a final determination of rights." *Id.* (quotation marks omitted). See, also, MCR 2.605(F) ("Further necessary or proper relief based on a declaratory judgment may be granted. . . ."). Consequently, in the context of public bodies, a judgment for declaratory relief is the "functional equivalent of an injunction." *U.S. Dep't of Health & Human Servs.*, 780 F.Supp.2d at 1314 (citations and quotation marks omitted).[6] As a final order, a declaratory
65 judgment acts to restrain *65 public bodies from further noncompliance with the OMA, consistent with the overall purpose of MCL 15.271. Accordingly, as *Ridenour* explained, although a plaintiff might not receive relief in the *form* of an injunction, the receipt of a declaratory judgment upon the finding of an OMA violation is the functional equivalent of one. *Ridenour*, 111 Mich.App. at 806, 314 N.W.2d 760. Although that might not be the case in a context other than the OMA, considering the purpose of MCL 15.271 and the OMA generally, I believe that *Ridenour* and its progeny clearly effectuated the intent of the Legislature by concluding that obtaining a judgment for declaratory relief is "succeed[ing] in obtaining relief in the action." See MCL 15.271(4).

In contrast to *Ridenour* and its progeny, the majority's interpretation undermines the OMA's enforcement provision and the purpose of the OMA, generally. In addition to mandating formal injunctive relief before costs and attorney fees can be awarded, the majority now clarifies that an "ongoing violation" is also a prerequisite to obtaining costs and attorney fees under the OMA. Consequently, the majority opinion effectively gives a public body at least one free pass at violating the OMA because, without more, the public body's violation of the OMA, no matter how substantial, is presumably not "ongoing."[7] I do not believe that the majority's apparent interpretation is what the Legislature intended when it adopted legislation aimed at promoting a "new era" of governmental accountability and public access to governmental decision-making. *Booth*, 444 Mich. at 222-223, 507 N.W.2d 422.

Further, under the majority's interpretation of MCL 15.271(4), even if a lawsuit may be brought to enforce the interests of the public at large, there is no incentive for the public body not to contest the plaintiff's interpretation of the statutory provisions through vigorous litigation. After all, upon the trial court's adverse ruling, the public body need only concede defeat to preclude injunctive relief. See *Wexford Co. Prosecutor v. Pranger*, 83 Mich.App. 197, 205, 268 N.W.2d 344 (1978) (affirming declaratory relief based on a violation of the OMA, but vacating an injunction, reasoning that there was no "*real* and *imminent danger* of irreparable injury" when the defendants acted in good faith); *Nicholas v. Meridian Charter Twp. Bd.*, 239 Mich.App. 525, 534, 609
66 N.W.2d 574 (2000) ("Where there is no reason to believe that a public body will deliberately *66 fail to comply with the OMA in the future, injunctive relief is unwarranted."). Under the majority's interpretation, such a concession will preclude an award to the plaintiff for his or her costs of pursuing the litigation even though, as previously explained, a grant of declaratory relief is generally sufficient to make the violation known to the public body and restrain it from further violating the OMA, which is consistent with the purpose of MCL 15.271(4) and the purpose of the OMA generally.

Of particular importance is that, in enacting MCL 15.271(4), the Legislature granted individual citizens the right to pursue remedies for OMA violations rather than rely solely on the Attorney General or county prosecutors. By doing so, the Legislature seems to have implicitly recognized that there would be times when members of the executive branch could not, or would not, act and that, in those instances, the overriding concern for governmental accountability mandates the availability of causes of action brought by private citizens. In light of the Legislature's choice to allow private citizen suits to pursue remedies for procedural OMA violations,[8] which vindicate the rights of the public at large, I cannot conclude that the Legislature intended to

limit this right to the small portion of the population that is capable of pursuing such actions at their own personal expense. See *Nemeth v. Abonmarche Dev., Inc.*, 457 Mich. 16, 47, 576 N.W.2d 641 (1998) (Cavanagh, J., concurring in part and dissenting in part). The result of the majority's decision is that the ability of private citizens to bring OMA complaints will, in all likelihood, be severely curtailed. To penalize private citizens and, consequently, the public at large, simply because relief comes in the form of a declaratory judgment, rather than injunctive relief, elevates form over substance when, as explained earlier, there is little practical difference between the two forms of relief in this context. Consequently, I do not believe that the Legislature intended the majority's interpretation of MCL 15.271(4), which undermines the OMA's purpose.

In this case, plaintiff requested both injunctive and declaratory relief and was ultimately awarded the latter. Because declaratory relief is sufficient to trigger attorney fees and costs under MCL 15.271(4), I would hold that plaintiff is entitled to costs and attorney fees, consistent with *Ridenour* and its progeny.

In light of the language, history, and purpose of the act, I cannot agree with the majority's decision to cast aside 33 years of precedent and erroneously write into the OMA a requirement that the Legislature did not intend—i.e., that a party must obtain formal *injunctive* relief as a prerequisite to an award of costs and attorney fees under MCL 15.271(4). Because I believe that more than three decades of precedent properly interpreted and effectuated the Legislature's intent, I respectfully dissent.

[1] MCL 15.261 *et seq.*

[2] MCR 7.215(J).

[3] MCL 15.263(2) requires that "[a]ll decisions of a public body shall be made at a meeting open to the public."

[4] MCL 15.265(3) requires that public notice of changes to regularly scheduled meetings be "posted within 3 days after the meeting at which the change is made[.]"

[5] This allegation appears to refer to MCL 15.270(2), which provides as follows:

A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3 [MCL 15.263](1), (2), and (3) in making the decision or if failure to give notice in accordance with section 5 [MCL 15.265] has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

However, plaintiff has specifically disclaimed that he sought to invalidate defendants' decision under that provision, stating that "[t]he damage had been done and invalidation under MCL 15.270 was simply not available."

[6] Plaintiff clarified in a later pleading that his claim for injunctive relief was premised on the Board's prior violation of the OMA during the selection of a new township fire chief. See *Speicher v. Columbia Twp. Bd. of Trustees*, 303 Mich.App. 475, 843 N.W.2d 770 (2014).

[7] *Speicher v. Columbia Twp. Bd. of Trustees*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2013 (Docket No. 306684), 2013 WL 238553.

[8] *Id.* at 2. The Court of Appeals pointed out that plaintiff was able to present his concerns to the Commission at the December 2010, January 2011, and April 2011 meetings.

[9] *Id.*

[10] *Speicher v. Columbia Twp. Bd. of Trustees*, 303 Mich.App. 475, 843 N.W.2d 770 (2013).

[11] *Speicher v. Columbia Twp. Bd. of Trustees*, 303 Mich.App. 475, 476-477, 843 N.W.2d 770 (2013). We note that the Court of Appeals also stated that "plaintiff did not request attorney fees at the trial court or in his claim of appeal." *Id.* at 477, 843 N.W.2d 770. But our review of the record proves that statement to be inaccurate. Plaintiff initiated his request for attorney fees in his complaint and reiterated that request in briefing on his motion for summary disposition and claim of appeal. Thus, this issue is preserved.

[12] *Id.* at 476-477, 843 N.W.2d 770, citing MCR 7.215(J)(1) ("A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.").

[13] *Speicher*, 303 Mich.App. at 482, 843 N.W.2d 770, citing *Ridenour v. Dearborn Bd. of Ed.*, 111 Mich.App. 798, 314 N.W.2d 760 (1981). In *Ridenour*, the trial court did not find it necessary to grant injunctive relief because of the defense attorney's promise that the defendant would abide by the court's ruling. *Ridenour*, 111 Mich.App. at 801, 314 N.W.2d 760. The trial court nevertheless awarded the plaintiff court costs and actual attorney fees because he obtained "the equivalent of an injunction," and the Court of Appeals affirmed. *Id.* at 801, 806, 314 N.W.2d 760.

[14] See *Craig v. Detroit Pub. Schs. Chief Executive Officer*, 265 Mich.App. 572, 697 N.W.2d 529 (2005); *Herald Co., Inc. v. Tax Tribunal*, 258 Mich.App. 78, 669 N.W.2d 862 (2003); *Morrison v. East Lansing*, 255 Mich.App. 505, 660 N.W.2d 395 (2003); *Kitchen v. Ferndale City Council*, 253 Mich.App. 115, 127, 654 N.W.2d 918 (2002); *Nicholas v. Meridian Charter Twp. Bd.*, 239 Mich.App. 525, 609 N.W.2d 574 (2000); *Manning v. East Tawas*, 234 Mich.App. 244, 593 N.W.2d 649 (1999); *Schmiedicke v. Clare Sch. Bd.*, 228 Mich.App. 259, 266-267, 577 N.W.2d 706 (1998); *Menominee Co. Taxpayers Alliance, Inc. v. Menominee Co. Clerk*, 139 Mich.App. 814, 820, 362 N.W.2d 871 (1984).

[15] *Speicher*, 303 Mich.App. at 479, 843 N.W.2d 770. The Court of Appeals called for a special panel to resolve the conflict, see MCR 7.215(J)(3), but the Chief Judge of the Court of Appeals subsequently ordered that a special panel not be convened.

[16] *Speicher v. Columbia Twp. Bd. of Trustees*, 496 Mich. 852, 846 N.W.2d 923 (2014).

[17] *Eggleston v. Bio-Medical Applications of Detroit, Inc.*, 468 Mich. 29, 32, 658 N.W.2d 139 (2003).

[18] *Estate of Shinholster v. Annapolis Hosp.*, 471 Mich. 540, 549, 685 N.W.2d 275 (2004) (quotation marks and citations omitted).

[19] *Malpass v. Dep't of Treasury*, 494 Mich. 237, 247-248, 833 N.W.2d 272 (2013).

[20] In *Omdahl v. West Iron Co. Bd. of Ed.*, 478 Mich. 423, 733 N.W.2d 380 (2007), this Court addressed the language of MCL 15.271(4), but the plaintiff there sought and obtained injunctive relief, and the issue was limited to whether a pro se litigant, who is also an attorney, may recover court costs and actual attorney fees.

[21] MCL 15.263.

[22] MCL 15.265.

[23] MCL 15.270; MCL 15.271; MCL 15.273.

[24] MCL 15.270(1).

[25] MCL 15.271(1).

[26] MCL 15.271(4).

[27] MCL 15.273.

[28] *Leemreis v. Sherman Twp.*, 273 Mich.App. 691, 701, 731 N.W.2d 787 (2007).

[29] *South Haven v. Van Buren Co. Bd. of Comm'rs*, 478 Mich. 518, 528-529, 734 N.W.2d 533 (2007) (quotation marks and citation omitted).

[30] *Id.* at 529, 734 N.W.2d 533 (quotation marks and citations omitted).

[31] The Court of Appeals failed to identify the source of its authority to grant plaintiff declaratory relief in this case. The OMA does not provide for such relief. Nor is it clear that plaintiff was entitled to declaratory relief under MCR 2.605, the court rule governing declaratory judgments. See *South Haven*, 478 Mich. at 533-534, 734 N.W.2d 533 (stating that a party does not have standing to bring a declaratory judgment claim where there is no actual controversy); *id.* at 528, 734 N.W.2d 533 ("It is well settled that when a statute provides a remedy, a court should enforce the legislative remedy rather than one the court prefers.") (quotation marks and citation omitted). In any event, since no party raised the issue, we will assume without deciding that plaintiff was entitled to declaratory relief on its claim that defendants violated the act by not timely posting the Planning Commission's modified meeting schedule, as required by MCL 15.265(3).

[32] *Robinson v. City of Lansing*, 486 Mich. 1, 15, 782 N.W.2d 171 (2010) (citation omitted).

[33] *Id.*

[34] *Id.* at 16, 782 N.W.2d 171, citing 2A Singer & Singer, Statutes & Statutory Construction (7th ed.), § 47.2, p. 282.

[35] As noted above, Subsection (4) provides for an award of court costs and actual attorney fees when three conditions are met: (1) "a public body is not complying with the act"; (2) a person files "a civil action against the public body for injunctive relief to compel compliance or enjoin further noncompliance with the act"; and (3) the person "succeeds in obtaining relief in the action." MCL 15.271(4).

[36] See *Sanchick v. State Bd. of Examiners in Optometry*, 342 Mich. 555, 559, 70 N.W.2d 757 (1955) ("[W]ords and clauses will not be divorced from those which precede and those which follow.").

[37] See *Robinson*, 486 Mich. at 14, 782 N.W.2d 171, citing *Detroit v. Tygard*, 381 Mich. 271, 275, 161 N.W.2d 1 (1968) ("We regard the use of the definite article 'the' as significant.").

[38] *Random House Webster's College Dictionary* (2001).

[39] See *Felice v. Cheboygan Co. Zoning Comm.*, 103 Mich.App. 742, 746, 304 N.W.2d 1 (1981) ("Some meaning must be attributed to the phrase 'relief in the action.' The Legislature did not use the phrase 'because of the action,' nor did they simply require that a party be successful in obtaining 'relief.' In choosing the words 'in the action,' the Legislature intended to restrict the circumstances under which a plaintiff would be entitled to costs and actual attorney fees.").

[40] *Robinson*, 486 Mich. at 10-11, 782 N.W.2d 171, citing MCL 691.1402a.

[41] *Robinson*, 486 Mich. at 13, 782 N.W.2d 171. The version of MCL 691.1402a in effect at the time provided, in pertinent part, as follows:

(1) Except as otherwise provided by this section, a municipal corporation has no duty to repair or maintain, and is not liable for injuries arising from, *a portion of a county highway outside of the improved portion of the highway* designed for vehicular travel, including a sidewalk, trailway, cross-walk, or other installation. This subsection does not prevent or limit a municipal corporation's liability if both of the following are true:

(a) At least 30 days before the occurrence of the relevant injury, death, or damage, the municipal corporation knew or, in the exercise of reasonable diligence, should have known of the existence of a defect in a sidewalk, trailway, crosswalk, or other installation outside of the improved portion *of the highway* designed for vehicular travel.

(b) The defect described in subdivision (a) is a proximate cause of the injury, death, or damage.

(2) A discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk, trailway, crosswalk, or other installation *outside of the improved portion of the highway* designed for vehicular travel in reasonable repair [i.e., the "2-inch rule"].

[Emphasis added.]

[42] *Robinson*, 486 Mich. at 13, 782 N.W.2d 171.

[43] *Id.* at 16, 782 N.W.2d 171; see also *McCahan v. Brennan*, 492 Mich. 730, 739, 822 N.W.2d 747 (2012) ("When undertaking statutory interpretation, the provisions of a statute should be read reasonably and in context.").

[44] See *Robinson*, 486 Mich. at 16-17, 782 N.W.2d 171 ("[W]e do not believe that the Legislature is under an obligation to cumbersomely repeat language that is sufficiently incorporated into a statute. . . ."); *Griffith v. State Farm Mut. Auto. Ins. Co.*, 472 Mich. 521, 533, 697 N.W.2d 895 (2005) ("'[T]he meaning of statutory language, plain or not, depends on context.'") (citation omitted).

[45] MCL 15.271(1) and (4).

[46] MCL 15.271(2).

[47] MCL 15.271(4).

[48] We note that MCL 15.271(3) discusses an "action for mandamus" instead of an "action for injunctive relief" like MCL 15.271(1), (2), and (4). However, mandamus operates like an injunction, as mandamus "may issue *to compel* a body or an officer to perform a clear legal duty for one holding a clear legal right to such performance." *Detroit v. Detroit Police Officers Ass'n*, 174 Mich.App. 388, 392, 435 N.W.2d 799 (1989) (emphasis added).

[49] See *South Haven*, 478 Mich. at 529, 734 N.W.2d 533.

[50] As the dissent acknowledges, this Court does not favor legislative acquiescence as a proper interpretive tool to construe statutes. See *McCahan*, 492 Mich. at 749-750, 822 N.W.2d 747 ("[S]ound principles of statutory construction require that Michigan courts determine the Legislature's intent from its *words*, not from its silence.") (quotation marks and citation omitted).

[51] To the extent the dissent invokes the federal presumption that a declaratory judgment is the functional equivalent of an injunction, that presumption has not been adopted in this state, nor would it apply in this context given that the Legislature has explicitly provided injunctive relief as an available remedy under the OMA. MCL 15.271.

[52] See footnote 14 of this opinion.

[53] To the extent that plaintiff claimed that defendants' other OMA violations warranted injunctive relief in this case, the lower courts properly disregarded that claim, as those other OMA violations were unrelated to the alleged notice violation in this case. See *Wilkins v. Gagliardi*, 219 Mich.App. 260, 276, 556 N.W.2d 171 (1996) (affirming denial of injunction when there had been no similar incidents since the incident complained of and the membership of the committee involved was different).

[54] *Speicher*, unpub. op. at 2. See *Wilkins*, 219 Mich.App. at 276, 556 N.W.2d 171 ("Injunctive relief should be granted only when justice requires it, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable harm.").

[1] See *Sunshine or Shadows*, 1977 Det. C. L. Rev. at 617 ("Concern for public access to governmental decision-making is not new. . . . [T]he importance of government being open and accessible was established very early in this country.").

[2] See, also, *Menominee Co. Taxpayers Alliance, Inc. v. Menominee Co. Clerk*, 139 Mich. App. 814, 362 N.W.2d 871 (1984) (holding that the absence of a formal injunction does not preclude the plaintiff from recovering costs and attorney fees under MCL 15.271(4)); *Schmiedicke v. Clare Sch. Bd.*, 228 Mich.App. 259, 267, 577 N.W.2d 706 (1998) (holding that the "legal remedy of declaratory relief is adequate" to trigger an award of attorney fees and costs under MCL 15.271(4)); *Manning v. East Tawas*, 234 Mich.App. 244, 253-254, 593 N.W.2d 649 (1999) (expressly rejecting the notion that a failure to either grant injunctive relief or order future compliance with the OMA precludes an award of costs and attorney fees, reasoning that a finding that the OMA was violated constitutes declaratory relief, which is sufficient to entitle the plaintiff to an award of costs and attorney fees under MCL 15.271(4)); *Nicholas v. Meridian Charter Twp. Bd.*, 239 Mich.App. 525, 535, 609 N.W.2d 574 (2000) (holding that a declaratory judgment entitles a plaintiff to actual attorney fees and costs under MCL 15.271(4), "despite the fact that the trial court found it unnecessary to grant an injunction given defendants' decision to amend the notice provision after plaintiffs filed the present suit"); *Kitchen v. Ferndale City Council*, 253 Mich.App. 115, 127-128, 654 N.W.2d 918 (2002) ("Costs and fees are mandatory under the OMA when the plaintiff obtains relief in an action brought under the Act" because "[t]he plain language of [MCL 15.271(4)] simply states that plaintiffs need only 'succeed[] in obtaining relief in the action' in order to recover court costs and attorney fees") (citation omitted); *Morrison v. East Lansing*, 255 Mich.App. 505, 521 n. 11, 660 N.W.2d 395 (2003) (noting that the trial court properly granted the plaintiffs attorney fees and other costs because, "[w]here a trial court declares that the defendants violated the OMA, but finds it unnecessary to grant injunctive relief, the plaintiffs are entitled to

actual attorney fees and costs"); *Craig v. Detroit Pub. Sch. Chief Executive Officer*, 265 Mich. App. 572, 580, 697 N.W.2d 529 (2005) (stating that "[t]he imposition of attorney fees is mandatory upon a finding of a violation of the OMA").

[3] See, also, *Autio v. Proksch Constr. Co.*, 377 Mich. 517, 546, 141 N.W.2d 81 (1966) (Black, J., dissenting) (noting the "constantly employed axiom" that "the legislature enacts with the Court's interpretational decisions in one hand as it writes and votes with the other").

[4] While some members of this Court undoubtedly disagree with the doctrine of legislative acquiescence, I continue to believe that the doctrine, which has a deep-rooted history in Michigan, remains a valid interpretive aid. See *McCahan v. Brennan*, 492 Mich. 730, 757 n. 22, 822 N.W.2d 747 (2012) (Marilyn Kelly, J., dissenting); *Karaczewski v. Farbman Stein & Co.*, 478 Mich. 28, 53-54, 732 N.W.2d 56 (2007) (Marilyn Kelly, J., dissenting).

[5] Indeed, the evasion of a court's judgment might trigger other enforcement provisions of the OMA, further supporting the conclusion that declaratory relief, in the context of the OMA, acts to restrain noncompliance with the OMA. See MCL 15.272(1) ("A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00."); MCL 15.273(1) ("A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.").

[6] See, also, *id.* at 1316 (referring to a declaratory judgment against governmental officials as a "de facto injunction"); *California v. Grace Brethren Church*, 457 U.S. 393, 408, 102 S.Ct. 2498, 73 L.Ed.2d 93 (1982) ("[T]here is little practical difference between injunctive and declaratory relief. . . .").

[7] The majority does not elaborate on the meaning of "ongoing violation." However, to the extent that the majority opinion could be read to suggest that a plaintiff cannot bring suit under MCL 15.271 if the OMA violation is already complete at the time suit is filed, that result is inconsistent with decades of precedent. See *Wexford Co. Prosecutor v. Pranger*, 83 Mich.App. 197, 204, 268 N.W.2d 344 (1978) ("Insofar as the declaratory judgment finds the closed session of May 9, 1977, in violation of the open meetings statute, we affirm"); *Nicholas*, 239 Mich.App. at 535, 609 N.W.2d 574 ("Here, the trial court declared that defendants violated the OMA. This constitutes declaratory relief, thus entitling plaintiffs to actual attorney fees and costs despite the fact that the trial court found it unnecessary to grant an injunction given defendants' decision to amend the notice provision after plaintiffs filed the present suit"). Such a conclusion would also preclude most OMA actions that are brought under MCL 15.271(4) to challenge the alleged erroneous procedures used by a public body. Notably, those actions ultimately assist in bringing clarity to the OMA's requirements, thereby reducing future violations and furthering the OMA's purpose. I imagine that most citizens will not have time to run to the doors of a courthouse the moment a public body makes an erroneous decision to conduct its meeting in secret or in violation of the OMA's notice requirements. But, under the majority's apparent interpretation, this may now be required.

[8] Compare MCL 15.270 (permitting a private citizen to seek the invalidation of a public body's decision upon a violation of the OMA) with MCL 15.271 (generally permitting private citizens to seek compliance with the procedural requirements of the OMA, rather than the invalidation of a public body's decision).